

CHAPTER 14-05

DIVORCE

14-05-01. Marriage - How dissolved. Marriage is dissolved only:

1. By the death of one of the parties; or
2. By a judgment of a court of competent jurisdiction decreeing a divorce of the parties.

14-05-02. Effect of divorce. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, but neither party to a divorce may marry except in accordance with the decree of the court granting the divorce. It is the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when. The court shall have jurisdiction to modify the decree of divorce at any time so as to permit one or both of the parties to marry, if the court deems it right.

14-05-02.1. Decree to include social security numbers. Each decree of divorce must include the social security numbers of the parties to the divorce.

14-05-03. Causes for divorce. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Abuse of alcohol or controlled substances.
6. Conviction of felony.
7. Irreconcilable differences.

14-05-03.1. Grounds for separation. The court may grant a temporary or permanent decree of separation for any cause for which a divorce may be decreed.

14-05-04. Adultery defined. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

14-05-05. Extreme cruelty defined. Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other.

14-05-06. Desertion defined. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert:

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party when there is no just cause for such refusal, is desertion.
2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger reasonably would be apprehended from the other is not desertion by the absent party, but it is desertion by the other party.
4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.
5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.
6. Consent to a separation is a revocable act, and if one of the parties afterwards in good faith seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.
7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal must be deemed and treated as desertion by such party from the time of the refusal.

14-05-07. Willful neglect defined. Willful neglect is the failure of either spouse to provide for the common necessities of life for the other party, when that spouse has the ability to do so and the party alleging neglect does not have the ability, or when a spouse fails to provide by reason of idleness, profligacy, or dissipation.

14-05-08. Abuse of alcohol or controlled substances defined. Abuse of alcohol or controlled substances is that degree of use which disqualifies the person a great portion of the time from properly attending to business or which reasonably would inflict a course of great mental anguish upon the innocent party. For purposes of this chapter, "controlled substance" means a substance as defined in section 19-03.1-01.

14-05-08.1. Recognition of foreign decree of divorce and foreign annulment of marriage. A decree of divorce or of annulment of marriage obtained in a court of another jurisdiction is of no force or effect in this state, if the parties to the marriage were domiciled in this state at the time such decree was rendered.

If a person obtains a decree of divorce or of annulment of marriage from a court of another jurisdiction and was domiciled in this state within less than twelve months prior to obtaining the decree and resumes residence in this state within six months after obtaining the decree, it is prima facie evidence that such person did not abandon the person's domicile in this state prior to obtaining the decree.

The provisions of this section do not apply to any divorce or annulment of marriage obtained in proceedings begun prior to the passage of this section.

14-05-09. Desertion, neglect, intemperance - Duration. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for a divorce.

14-05-09.1. Irreconcilable differences defined. Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

14-05-10. Denial of divorce. Divorces must be denied upon showing:

1. Condonation; or
2. Limitation and lapse of time.

14-05-11. Connivance defined. Repealed by S.L. 2001, ch. 149, § 13.

14-05-12. Collusion defined. Repealed by S.L. 2001, ch. 149, § 13.

14-05-13. Condonation defined - Requisites. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party; and
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which aggregately may constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoids such condonation.

14-05-14. Revocation of condonation. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled.

14-05-15. Recrimination defined. Repealed by S.L. 1963, ch. 127, § 2.

14-05-16. Limitation of time. A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action. There are no limitations of time for commencing actions for divorce, except such as are contained in this section.

14-05-17. Residence requirements. A separation or divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a separation or divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation or divorce.

14-05-18. Presumption of domicile. In actions for divorce, the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation, each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions.

14-05-19. Affirmative proof required. Repealed by S.L. 1971, ch. 150, § 1.

14-05-20. Legitimacy of children - Adultery by husband. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

14-05-21. Legitimacy of children - Adultery by wife. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected, but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case. In every such case, all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.

14-05-22. Custody of children - Visitation rights - Costs.

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

14-05-23. Temporary support, attorney's fees, and custody. During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney's fees. The court in the order may award custody of minor children to a party. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A

violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

14-05-24. Division of property.

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. The court may redistribute property in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

14-05-24.1. Spousal support. Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for any period of time. The court may modify its spousal support orders.

14-05-25. Security for alimony - Disposition of homestead. The court may require either party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. When either the husband or the wife has a separate estate sufficient to give a proper support, the court in its discretion may withhold any allowance to that person out of the separate property of the other spouse. The court, in rendering the decree of divorce, may assign the homestead or such part thereof as to the court may seem just, to the innocent party, either absolutely or for a limited period, according to the facts in the case and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of either party to a marriage and for the custody, education, and support of the children are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a separation or divorce decree relating to distribution of the property of the parties constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

14-05-25.2. Enforcement of support order. Any order or judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support.

14-05-26. Separate maintenance provided for when divorce denied. Though a judgment of divorce is denied, the court in an action for divorce may provide for the maintenance of one spouse by the other and the maintenance of any or all children.

14-05-27. Separation - Spousal support - Division of property. Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the property and debts of the parties.

14-05-28. Decree of separation - Effect. The decree of separation confers upon the parties all the rights of property, business, and contracts as if unmarried and releases both parties from all obligations of maintenance, except as may be required by the decree.

14-05-29. Revocation of decree of separation - Divorce granted. At any time after a decree for separation has been granted, the court may revoke the decree based upon any regulations or restrictions the court imposed in the decree. Application for revocation may be made by either party to the decree. The party making the application for revocation shall provide to the other party to the decree at least ten days' and not more than twenty days' notice of the application. Service must be made in the same manner as service of a summons in a civil action. If it appears to the court at the hearing of the application that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has not previously done so, the court shall provide for the equitable division of the property, shall make orders with respect to any minor children, and may provide for the payment of support to either party by the other.